BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2004-357-W/S - ORDER NO. 2005-465

OCTOBER 17, 2005

IN RE: Application of Carolina Water Service, Incorporated for Adjustment of Rates and Charges and Modification of Certain Terms and Conditions for the Provision of Water and Sewer Service.	) ORDER DENYING) REHEARING OR) RECONSIDERATION) AND SETTING BOND)

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Rehearing or Reconsideration (the Petition for Rehearing or Reconsideration or the Petition) of Commission Order No. 2005-328 (Order No. 2005-328 or the Order) filed by Carolina Water Service (CWS or the Company). Alternatively, CWS requests approval of a bond on appeal. For the reasons stated below, we deny the Petition for Rehearing or Reconsideration. Further, we approve the request for approval of a bond on appeal as filed, however, we hold in abeyance any ruling on how refunds, if appropriate, should be made.

The Petition for Rehearing or Reconsideration may be divided into three main sections: (1) rate of return; (2) customer growth; and (3) customer service, water quality, and South Carolina Department of Health and Environmental Control issues. We will address each section separately.

I. RATE OF RETURN

The Company's first allegation of error in the area of rate of return is that this Commission erred in relying upon ORS witness Johnson's surrebuttal testimony, which contained "judgment" on the growth rate of 5.5%-6.5%. CWS asserts that, although the witness relied on a combination of historical data plus judgment, this judgment was not based on any evidence in the record, and that it was therefore error for the Commission to rely on this testimony to support a conclusion contained in the Order. We disagree. The data, and therefore, the evidence upon which Dr. Johnson relied to determine his growth rate is laid out in detail in Dr. Johnson's direct testimony before this Commission at Tr., pp. 251-252. To quote in part, "The growth rate I used in my DCF analysis encompasses the rapid 6.0% growth in dividends which was experienced from 2001 to 2003, as well as the 5.5% growth in earnings which was experienced during 1997-2001.....The growth rate range of 5.5% to 6.5% I used in my DCF analysis is generally consistent with the average growth in book value which was experienced by these 10 water companies from 1995 through 2003." Tr., p. 251, l. 21-p. 252, l. 4. Dr. Johnson goes on to explain why the growth in book value is significant in this context. Dr. Johnson further states, "The 5.5% to 6.5% growth range I used in my DCF analysis falls between the 9.7% book value growth rate experienced during 2001-2003 and the 1.4% growth rate experienced during 2000-2002. It is somewhat lower than the average rate of growth in book value during 1997-2003 of 7.1%, but it encompasses the corresponding growth rates during 1997-2002 (6.3%) and 1996-2002 (6.2%)." Tr., p. 252, ll. 10-15. Thus, Dr. Johnson fully explicated a basis for his judgment in arriving at the growth rate range of 5.5%-6.5%.

An expert witness may base his opinion on information, whether or not admissible, made available to him before the hearing if the information is of the type reasonably relied upon in the field to make opinions. SCRE 703; Hundley v. Rite Aid of South Carolina, Inc., 339 S.C. 285, 529 S.E. 2d 45 (S.C. App. 2000). According to SCRE 703, this information need not even be admissible in evidence. Clearly, Dr. Johnson relied on information of the type reasonably relied upon in his field to make opinions and made an informed judgment as to the growth rate of 5.5%-6.5%. Accordingly, the CWS allegation that Dr. Johnson's exercise of judgment is without evidentiary basis is without merit and must be rejected.

The second allegation of error in the rate of return area is that "no witness discussed the appropriateness of a 1% range on return on equity to be established and imposed within the range of returns otherwise testified to as is adopted by Order No. 2005-328." Also included in this allegation is language questioning the use of S.C. Act 16 as an example of the use of a 1% range, and language attacking the discussion of the agreed upon range for rate of return in Docket No. 2004-178-E (which CWS incorrectly denominates as a "gas case"). For the reasons stated herein, the adoption of the 1% range was appropriate, and this second allegation of error must also be rejected.

First, the discussion of the Natural Gas Rate Stabilization Act and the agreed upon range for rate of return in Docket No. 2004-178-E was to show that 1% ranges in the rate of return arena are not uncommon, and, in the case of Docket No. 2004-178-E (an electric case), a 1% range for rate of return was actually adopted by this Commission. Even though this Commission is not allowed to base its decision on past practice (See Hamm v.

South Carolina Public Service Commission, et. al., 309 S.C. 282, 422 S.E. 2d 110 (1992)), it has also been alleged by some that this Commission may not deviate from past practice without sufficiently defining its reasons for doing so. (See 330 Concord Street Neighborhood Association v. Campsen, 309 S.C. 514, 424 S.E. 2d 538 (Ct. App. 1992)). Although application of these court cases to the Commission appear to be contradictory to us, we would note that the purpose of the discussion with regard to the Order in Docket No. 2004-178-E was to show that setting a 1% range on rate of return was not an arbitrary decision on the part of this Commission, but had its roots in a decision in prior litigation.

Second, a 1% range of rate of return is perfectly acceptable, as it is based on the evidence contained in this case. ORS witness Johnson stated that the cost of equity to the typical local water utility is within a 1% range. Tr., p. 242, ll. 19-20. He also testified that, based on his comparable earnings analysis, his estimate of the cost of equity is a 1% range. Tr., p. 268, ll. 7-8. Even though we did not adopt either of the exact 1% ranges recommended by Dr. Johnson for our ultimate rate of return on equity, it is reasonable, based on Dr. Johnson's testimony, to adopt a 1% range for rate of return in this case.

Further, this Commission was not required to inform the Company that it would be using a 1% range on rate of return. No due process rights were violated in this context, since a wide range of rates of return were presented in testimony at the hearing on this matter, and these ranges were subject to cross-examination, including some in the 1% range. See discussion above. Further, this Commission sits as the trier of the facts, akin to a jury of experts. Hamm v. South Carolina Public Service Commission, et al., 294 S.C.

320, 364 S.E. 2d 455 (1988). A jury is free, as a general rule, to accept or reject in whole or in part testimony of any witness, including an expert witness. Sauers v. Poulin Brothers Homes, Inc, et al., 328 S.C. 601, 493 S.E. 2d 503 (S.C. App. 1997). In this case, as finders of fact, it was our belief that a particular 1% range on rate of return (9.1%-10.1%) captured the most reasonable rate of return for the Company and we reaffirm this belief in this Order. This allegation of error by the Company is rejected.

The third allegation of error by CWS in the rate of return area is that we erred in concluding that 9.1% was the appropriate rate of return on equity for the express purpose of minimizing the impact of the rate adjustment on customers. CWS addressed three specific points in this area. According to the Company, there was no discussion or analysis of the reasons that the Company's customers are entitled to have the impact of a rate increase minimized by setting the allowable return on equity at the lowest end of the range adopted. Second, CWS alleges that there was no explanation provided of how the determination was made that "effectively eliminating 90% of the adopted range of returns 'allows [sic] the Company to realize a reasonable rate of return and maintain its financial viability.'" Petition at 7-8, quoting the Order at 19. Third, according to CWS, minimizing the impact on customers is inconsistent with the Commission's charge under law to balance the interests of utilities and ratepayers. We discern no error.

Order No. 2005-328 specifically states the intention of this Commission to balance the interests of utilities and ratepayers. We stated as follows: "We are setting rates at the low end of the range in order to minimize the impact on the Company's customers, while allowing the Company to realize a reasonable rate of return and

maintain its financial viability." Order No. 2005-328 at 19. This clearly indicated an intent to balance the interests of both groups, and we reaffirm that intent. The 9.1% was clearly in Dr. Johnson's range of rates of return after the subtraction of flotation costs. The cost of equity approved by this Commission must be supported by the expert testimony. See Hamm v. South Carolina Public Service Commission, 309 S.C. 282, 422 S.E. 2d 110 (1992). This Commission may come to any reasonable conclusion that is supported by the evidence, and, again, the 9.1% is within the range of returns found in the evidence of this case, once flotation costs are subtracted.

Further, we would note that the 9.1% rate of return was only used to set the rates in this case. Under our holding in Order No. 2005-328, this Commission found that a return-on-equity range of 9.1% to 10.1% was appropriate for CWS. Order No. 2005-328 at 18. Accordingly, CWS has the right, under that order, to earn up to a 10.1% return on equity without penalty from this Commission. Thus, we are not eliminating 90% of the adopted range of returns. We believe that this addresses the rights of the utility under a consumer-utility balancing methodology. The consumer benefit, in our judgment, comes from setting the rates at the other end of the range supported by the evidence, i.e. 9.1%. Therefore, both the rights of the consumer and the rights of the utility were balanced and addressed in Order No. 2005-328. This allegation of error by the Company is misplaced.

In addition, with regard to the rate of return issue, CWS states in footnote 2 on page 2 of its Petition that it appeared to CWS that the range intended to be stated in Order No. 2005-328 at 16 is actually 9.1% to 10.4% after subtraction of the .4% flotation adjustment proposed by Dr. Johnson, instead of the stated 9.1% to 10.7%, since the

witness proposed a range of 9.5% to 10.8% for his discounted cash flow (DCF) analysis. In making this observation, CWS erroneously limited itself to Dr. Johnson's DCF analysis. Our intent was to indicate a range of rates of return encompassing both his DCF and his comparable earnings approach ranges, and not limit ourselves to his DCF approach. Combining both approaches yields a combined range of 9.5% to 11.1%. This encompasses a low end of Dr. Johnson's DCF range of 9.5% and high end of 11.1% under the comparable earnings approach. Tr., p. 254, ll. 12-13. If the 0.4% flotation cost amount is then subtracted from both the low and the high figures, a range of 9.1% to 10.7% results, as shown in Order No. 2005-328 at 16. Therefore, footnote 2 on page 2 of the CWS Petition is erroneous.

II. CUSTOMER GROWTH

The Company alleges that this Commission determines rates in an erroneous, arbitrary, and capricious manner because the sewer rates proposed by it were rejected. The gravamen of this statement is that, because Order No. 2005-328 (at p. 35) rejects the ORS customer growth adjustment of $23,825, a lower monthly sewer service charge results (and a higher return on rate base) than was proposed by the Company and agreed to by ORS. CWS then elaborates on why this rejection was allegedly erroneous.

First, CWS alleges that rejection of the ORS customer growth adjustment is contrary to the Commission's established practice of requiring that customer growth rates be applied to both revenue and expenses. According to the Company, the method utilized by the Commission "saddles" the Company with the liability of customer growth on the revenue side, but denies it with the corresponding benefits to the Company on the

expense side, since it applies only to revenues. The Company asserts that this Commission has routinely rejected a one-sided adjustment for customer growth. This allegation of error is without merit. We would note that both the Company and ORS agreed on record in this case to a methodology that contained two ways to determine customer growth. Order No. 2005-328 at 34. The Commission found that, on the one hand, CWS included a customer growth component in its calculation of water revenue to be produced under proposed rates. CWS included a growth factor of 6.34% which was applied to billing units and usage (gallons) in calculating water revenue to be produced under proposed rates. CWS also included a growth factor of 2.49% which was applied to billing units in calculating sewer revenue to be produced under proposed rates. Id. At the hearing, CWS agreed to the ORS report which included growth in revenue and also a growth calculation using net operating income. We held in Order No. 2005-328 that we only needed one customer growth adjustment, not two, so we picked the customer growth in revenue adjustment as proposed by the parties, and rejected the other one. Clearly, we have the right to accept one of two possible adjustments proposed to us in the record, and, in this case, by agreement of the parties. Further, we would note that either the Company or ORS could have proposed expense adjustments to the method, but neither chose to do so. Therefore, we discern no error.

Second, CWS asserts that the customer growth component of its revenue calculation was not proposed as a customer growth adjustment for ratemaking purposes, and, thus, there is no evidence to support it. This particular assertion of error is without merit. Again, both the Company and ORS agreed to a methodology containing two

methods for measurement of customer growth, including the one we adopted. Accordingly, we disagree with the Company's assertion and reject it.

Third, the Company states that by adopting a customer growth adjustment applying only to revenue, Order No. 2005-328 overstates the additional annual revenue required to achieve a return on rate base of 8.02%, and understates the monthly sewer service rate required to achieve the proper additional revenue to which the Company is entitled. Again, we would note that the Company and ORS agreed on a methodology that contained alternate ways to address customer growth. If the Company had some difficulty with one of the methods, it had a right to make its views known prior to the time of agreeing with the revised ORS audit report, and to act accordingly. However, in the Parties' stipulation, the Company saw fit to agree to the revised ORS audit report which included Customer Growth by two different methods. Therefore, the Commission had the right to act as it did in this case and adopt one of the proposed methods. The Company may not criticize and disclaim after the fact a methodology that it proposed. This assertion of error is therefore rejected.

III. CUSTOMER SERVICE, WATER QUALITY, AND COMPLIANCE WITH DHEC REGULATIONS

The Company asserts that, with regard to customer service, water quality, and compliance with DHEC regulations, the Commission's findings are erroneous in light of the substantial evidence of record and that the measures imposed are contrary to or in excess of law and violate the Company's due process rights. CWS objects to conclusions being made and measures applied to the Company, based upon the neighborhood area nighttime public hearing testimony of approximately three-tenths of one percent (.3%) of

the Company's total customer base. In addition, the Company states that, in view of the size of the Company's customer base, it submits that the level of customer testimony complaining about service is immaterial, and that the customers that testified did so not only about customer service issues, but about rate issues. Further, CWS states that the majority of customers that testified were from the River Hills area, but that there is no evidence in the record, based upon inspection by the Office of Regulatory Staff, that a customer service or quality of service issue exists in that service area. According to CWS, no complaints have been filed with the Commission. The Company further asserts that, in the Company's words, the "anecdotal" evidence from customer public hearing testimony is not sufficient to permit a reasonable conclusion with respect to the Company's overall quality of service and customer service. We reaffirm our findings with regard to customer service, water quality, and compliance with DHEC regulations.

First, we would note that none of our findings with regard to these three areas directly affected the rates granted to the Company, which were based strictly on adjustments to revenues and expenses, plus an applicable operating margin. We did, however, see a need for the Company to implement various measures to ensure proper customer service, water quality, and proper compliance with DHEC regulations, after listening to customer testimony. Though a small number of customers may have testified as compared to the total number of customers of the Company, we believe that this testimony constituted sufficient evidence upon which to base our conclusions, considering what we heard in each of our four evening hearings on this matter. Further, we would note that representatives of the Company were present for each of the

neighborhood area hearings in question, and were afforded the opportunity to ask questions of all witnesses. No due process violations occurred. This Commission also had the legal right to institute new measures. First, S.C. Code Ann. Section 58-5-210 (1976) vests this Commission with power and jurisdiction to fix just and reasonable standards, practices, and measurements of service to be followed by public utilities. Further, 26 S.C. Code Ann Regs. 103-500 (B) and 103-700 (B) (1976) state that the Commission can require any other or additional service, equipment, facility, or standard, either upon complaint, upon the application of any utility or upon its own motion.

This is precisely what we have done in the present scenario. Pursuant to various complaints within the application proceedings, and after due hearing, this Commission has established additional reporting requirements and has asked for the Office of Regulatory Staff to establish certain standards and further investigate the Company's facilities. This Commission is well within its legal rights as outlined by statute and regulations to institute the measures that we did in Order No. 2005-328, as will be further explained in more detail below.

CWS argues that the Commission may not properly rely upon "anecdotal" evidence cited in Order No. 2005-328, as it is not such as would permit a reasonable person to form a conclusion with respect to the Company's overall quality of service and customer service. Again, we would note that we heard testimony from a number of customers during the course of four night hearings, and much of this testimony related to questionable customer service. Further, the use of "anecdotal" evidence may be permissible in formation of a tribunal's conclusions. See Florida Bar v. Went For It, Inc.,

518 U.S. 618, 115 S.Ct. 2371, 132 L.Ed. 2d 541 (1995), in which the United States Supreme Court accepted the "anecdotal record" mustered by the Florida Bar and held that the Bar satisfied the second prong of the test set out in Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y., 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980). In addition, the Fourth Circuit United States Court of Appeals considered anecdotal evidence when considering whether a trademark had been infringed. See Sara Lee Corporation v. Kayser-Roth Corporation, 81 F.3d 455 (1996). Accordingly, the use of anecdotal evidence may be a permissible basis upon which to form a conclusion. We believe that the number of customers presenting customer service problems supports our use of this evidence to establish remedial measures.

A. Customer Service

In addition, the Company alleges that the use of Seabrook Island Property Owners Ass'n v. South Carolina Public Service Commission, 303 S.C.493, 401 S.E. 2d 672 (1991) to support the proposition in Order No. 2005-328 that "the Commission has always considered **customer service** and quality of service to be components of rate cases" is improper, because the case does not contain the words **customer service** (emphasis added). Clearly, the case does make reference to "quality of service." The exact passage referred to in the case reads as follows: "It is incumbent upon the PSC to approve rates which are just and reasonable, not only producing revenues and an operating margin within a reasonable range, but which also distributes fairly the revenue requirements, considering the price at which the company's service is rendered and **the quality of that service** (emphasis added)." 401 S.E. 2d at 675. Although we agree that

the words **customer service** do not appear in that passage, we believe that **quality of service** must implicitly include **customer service**. There is no question that customer service has to be a major component of the quality of service provided by a Company. We do not agree that Patton v. Public Service Commission, 280 S.C. 288, 312 S.E. 2d 257 (1984) fully explicates the quality of service concept. Accordingly, we believe that the Seabrook Island Property Owners case is supportive of our statement in Order No. 2005-328 when we discuss both customer service and quality of service. This allegation of error is without merit.

Further, the Company takes issue with the Order's conclusion that CWS did not have a systematic approach to reviewing complaints and outcomes, when the Company believes that the evidence showed that CWS maintains customer complaint records on a computer database with various parameters, and the ORS concluded that this complied with Commission regulations. The Order concluded that there were no periodic reports of customer complaints. Based upon these conclusions, the Commission directed CWS to make periodic reports and provide them to ORS for review. CWS states that the only evidence of record in the case is that the Company meets all of the Commission's regulations pertaining to quality (adequacy) of service and customer relations, and that the Commission has not had a single customer complaint since the last rate case. CWS alleges that there is no requirement that the Company capture complaint information in a periodic manner. According to the Company, the directives in the Order amend existing regulations and contravene the Administrative Procedures Act, and certain other

directives are in excess of the Commission's statutory authority and exceed the requirements of existing regulations. We disagree with all of these assertions.

First, we would state that the Company takes a very narrow view of this Commission's powers. Again, we point to S.C. Code Ann. Section 58-5-210 (1976) and 26 S.C. Code Ann. Regs. 103-500 (B) and 103-700 (B) (1976) as giving this Commission full authority to fix just and reasonable standards and additional practices. Further, we would note that Company witness Haas testified that no periodic reports of customer complaints were generated by the Company, which would allow the company to be aware of the volume of its customer complaints. [Tr., pp. 367-369.] Clearly, the testimony of the Company's own witness supports this Commission's conclusion that CWS did not have a systematic approach to reviewing complaints and outcomes, and there were no periodic reports of customer complaints. This allegation of error is without merit.

B. Water Quality

CWS complains that the portion of Order No. 2005-328 that discussed allegations of poor water quality, concluded that there was no testing data in the record which would allow the Commission to make findings regarding the odor, taste, or turbidity of the Company's water in connection with this rate hearing, and ordered ORS to develop tests in compliance with 26 S.C. Code Ann. 103-770 (1976) was unsupported or is erroneous in view of the substantial evidence of record and is in excess of the Commission's authority under the law and Commission regulations. The Company then raises four independent grounds for its conclusion. We disagree with the main conclusion and with the grounds stated for reasons that will be elucidated below.

First, CWS states that no more than thirteen of the Company's 5,800 water customers testified on this matter, and, therefore, that no conclusion as to the overall quality of water supplied could be drawn from this testimony. CWS misconstrues the intent of the Commission in this portion of the Order. This Commission drew no conclusion as to the overall quality of the water. See Order No. 2005-328 at 52-53. This Commission merely stated that there were a number of complaints about the poor quality of the water, but that there was no testing data in the record which would allow the Commission to make findings regarding the odor, taste, or turbidity of the Company's water. This Commission went on to state that the complaints received were a cause of concern and that tests should be developed for these parameters in connection with the appropriate statues and regulations, and that tests should then be conducted. This was a legitimate conclusion that could be reached under 26 S.C. Code Ann. Regs. 103-700(B). Therefore, the first ground for the Company's conclusion is erroneous, since no conclusion as to the overall quality of the water was reached.

Second, the Company states that the fact that no testing data is in the record with respect to odor, taste, and turbidity of the water supplied by CWS is irrelevant to the issues properly before the Commission. Further, CWS alleges that there is no requirement that CWS supply water testing data with its application, and that the Department of Health and Environmental Control (DHEC) is the state agency responsible for water testing, not the ORS. DHEC provided no evidence as to deficient water quality in the case. Again, the allegation has no merit. First, this Commission certainly did not require CWS to file water testing data with its application. There is no Commission rule that

requires this. However, when the Company's water quality is challenged as it was in this proceeding, this Commission may certainly inquire under the statutory and regulatory authority afforded it under law. Whereas there is no question that DHEC is responsible for certain health aspects of the water supply, this does not preclude ORS from testing the aesthetic quality of the water. Further, we would cite S.C. Code Ann. Section 58-4-50 (6)(Supp. 2004), which states that ORS shall, upon request by the commission, make studies and recommendations to the commission with respect to standards, regulations, practices, or service of any public utility pursuant to the provisions of the title. Clearly, 26 S.C. Code Ann. Regs. 103-770 (1976), entitled "Quality of Service," states that each utility shall provide water that is potable, and insofar as practicable, free from objectionable odor, taste, color and turbidity. We were well within our rights to request that ORS develop tests, based on statutory and regulatory authority. We would note that ORS already has certain testing criteria on its report sheets, like "clarity" and "odor," although ORS did not test for clarity in this case. We believe that aesthetics are important with regard to quality of service matters, as evidenced by 26 Code Ann. Regs. 103-770 (1976), and that we properly directed ORS to aid us in the determination of such aesthetics with regard to the water provided by Carolina Water Service.

In connection with the consideration of Regulation 103-770, CWS states that the regulation imposes only one requirement, which is to provide potable water, and there is no evidence that CWS' water is not potable. The Company implies that the remainder of the regulation concerning objectionable odor, taste or color may only be considered where practicable, and there is no evidence in the record in this area. CWS seems to

believe that the words "where practicable" renders the odor, taste and color portion of the regulation as unenforceable or moot, and that the only matter to be considered is potability. This is a misreading of the regulation. Clearly, the intent of the Legislature is for CWS to provide water that is free from objectionable odor, taste, and color and turbidity "where practicable."[1] This is a regulatory burden and responsibility placed upon CWS. CWS' argument regarding an alleged absence of evidence of practicability impermissibly attempts to shift that burden. In any event, the regulation certainly does not prevent the Commission from delving into these areas. In fact, that is exactly what the Commission is attempting to do with its mandate to ORS to develop and conduct tests in these areas.

Next, the Company states in its Petition that it is unaware of any statutory authority whereby ORS may conduct the tests on water directed by the Commission. This statement is erroneous. S.C. Code Ann. Section 58-5-210 gives the Commission broad authority to set standards and measurements of service for public utilities. Again, S.C. Code Ann. Section 58-4-50(6)(Supp. 2004) states that, upon request by the Commission, ORS is to make studies for the Commission with respect to service of any public utility. We believe that the statutory authority for our order is sound. Further, we do not think that DHEC's statutory responsibilities affect the authority as stated above, and that the statutes cited constitute separate authority as they specifically relate to circumstances such as those in the present case.

[1] The American Heritage Dictionary of the English Language, Fourth Edition, 2000, defines *practicable* as: "Capable of being effected, done, or put into practice; feasible."

Obviously, because of the reasoning as stated above, we disagree with the Company's conclusory paragraph in this section (Petition at 20), which alleges that Paragraphs 1 and 2 at pp. 52-53 of Order No. 2005-328 are not supported by, or are erroneous in light of the substantial evidence of record, and exceed the Commission's authority under law. The entire allegation is without merit. Simply put, a water rate case must involve how much people pay for their water, and the quality of water and service provided for the price.

C. DHEC Violations

The Company notes that the Commission, in Order No. 2005-328, places stringent reporting requirements on the Company with regard to DHEC violations. According to CWS, this is unsupported by, or is erroneous in view of, the substantial evidence of record, is arbitrary and capricious, is violative of the South Carolina Constitution, and is in excess of the Commission's authority under law and its own regulations. We disagree.

Order No. 2005-328 finds that CWS was fined by DHEC for violations of that agency's regulations during the test year, but that "there is no record before the Commission explaining the specific nature of these violations or the amount of fines." Order No. 2005-328 at 53. The Order then concludes that DHEC violations "by their very nature, affect the services provided to Carolina Water Service's customers." Id. at 53-54. This Commission then created a reporting system for the Company of such violations.

The Company first alleges that the fact that none of the DHEC fines were claimed for ratemaking purposes makes the conclusions of the Commission erroneous in light of the substantial evidence of record. The fact that none of the DHEC fines were claimed for

ratemaking purposes is irrelevant to the DHEC issue before the Commission. Clearly, Company witness Lubertozzi revealed [Tr. at 511-512] that the Company had been fined by DHEC on several occasions, but neither he, nor any other Company witness was able to explain the specific nature of the violations or the amount of the fines. The Commission was concerned about the nature of the violations, because DHEC violations may likely be related to health concerns related to consumption of the Company's water by the Company's customers. ORS witness Dawn Hipp testified that the Company had failed to file notices of violations of PSC or DHEC rules required by 26 S.C. Code Ann. Regs.103-714(C). The Company took the position during the hearing that it was not obligated to report the violations, the nature of which were still unknown, to the Commission or to ORS because the Company had independently determined that the violations were not the kind that affected its service. By withholding information about DHEC violations, the Company seeks to substitute its own judgment for that of the Commission and the ORS. The Commission simply set up a reporting system to ensure that DHEC violations would be reported by declaring that DHEC violations, by their very nature, affect the service provided to Carolina Water Service's customers, and are thus reportable under the Regulation. Again, the fact that the fines were not being claimed for ratemaking purposed by the Company is clearly irrelevant to this Commission's stated concerns about the violations.

Second, the Company alleges that on the one hand, the Order notes that the Commission lacks information pertaining to the nature of the DHEC violations, and, on the other hand states that the nature of the violations does not matter. This is without

merit. The problem that the Commission was trying to address was lack of information. We concluded that "DHEC violations, by their very nature, affect the service provided to Carolina Water Service's customers." Our conclusion was not that the nature of the violations did not matter, but, to the contrary, that every DHEC violation matters, to the point where we believe that all such violations were reportable under the regulatory language. We do not believe that it should be left up to a Company to determine whether a DHEC violation affects the service provided to its customers. We believe, as we stated in Order No. 2005-328, that DHEC violations, by their very nature, affect the service provided to the Company's customers, and we took steps to ensure that such violations were properly reported to this Commission, and, therefore, that the proper information is obtained. This ground is without merit.

Third, CWS states a belief that this portion of Order No. 2005-328 "departs from the plain language of the provisions of 26 S.C. Code Ann. RR. 103-513 (C) [sic] and 103-713 (C) (Supp. 2004) [sic][2], which only require that CWS report notices of violations of DHEC rules which affect the service provided to its customers.'" Petition at 21. The Company asserts that if the Commission and legislature had intended to include a requirement that all notices of DHEC violation be reported to the Commission, and not just those "which affect the service provided to...customers," they could have said so, but they did not. The Company goes on to state its view that the regulation actually means that only violations which result in an interruption of service "affect the service provided to...customers." The Company cites no support for this interpretation of the regulation,

[2] CWS was apparently referring to 26 S.C. Code Ann. Regs. 103-514 (C) and 103-714 (C) (Supp. 2004).

and we believe that it is much too narrow. We would remind CWS that this Commission is the ultimate interpreter of its own regulations, and we accordingly believe that any DHEC violation affects the Company's service to its customers. The fact of the matter is that the Company refused or was unable to give this Commission any information about the nature of its DHEC violations at all. Accordingly, we believe that the Commission has the right to demand reports on all DHEC violations so that this Commission may be properly informed about such violations. We can then decide what is significant and not significant, not the Company. The remedy is reasonable in the light of the fact that CWS was unable to furnish any information at all about DHEC violations. Lastly, what ORS did or did not assert in its proposed order in this matter is simply not binding on this Commission as to the Commission's interpretation of its orders. Further, if one interprets what this Commission did in this section as altering or amending its rules, this Commission is well within its rights under 26 S.C. Code Ann. Regs. 103-500 (B) and 103-700 (B) (1976) to alter or amend the rules and to impose an additional standard, either upon complaint or upon the Commission's own motion.

Fourth, CWS alleges that this portion of Order No. 2005-328 violates the Company's due process rights since it requires the Company to take certain actions even though there has been no final determination that DHEC regulations have been violated. This allegation of error is certainly without merit. Again, the problem being addressed by the Commission in this part of the Order was the lack of information available from the Company on DHEC violations. The only thing that this Commission ordered the Company to do was to report all DHEC violations and note corrective actions that may

have been taken, as the result of the lack of information on DHEC violations provided by the Company in this hearing. No further action was ordered. As this Commission stated in Order No. 2005-328, "this reporting system will allow ORS to make an informed decision about the Company's compliance with DHEC rules and regulations, provide a database on this topic, and will also allow ORS to take action, if any, that it deems necessary in the future." Order No. 2005-328 at 54. No due process rights of the Company are violated by this reporting procedure. The procedure is merely a mechanism to obtain information. It does not require any other Company activity other than mere reporting. We discern no error in imposing these reporting requirements.

Lastly, CWS states that this portion of the Order violates S.C. Code Ann. Section 1-23-110 since it affects an amendment to R. 103.712.4.A.13 and R. 103-713 (C), and only as to a single utility, without observance of the requirements for rulemaking, including notice to those sought to be bound. The Company then concludes in a rather broad statement that the requirements of paragraphs 1, 2, and 3 at page 54 of Order No. 2005-328 are not supported by, or are erroneous in light of, the substantial evidence of record, are arbitrary and capricious, and exceed the Commission's authority under its regulations and law, and violate the Company's constitutional rights. Such allegations are unavailing. Again, this Commission merely interpreted our own regulation by holding that DHEC violations, by their very nature, affect the service provided to Carolina Water Service's customers and, as such, all DHEC violations are reportable. This procedure was established to address a problem particular to Carolina Water Service. Further, we cannot bind other water and wastewater utilities with our holding in this case, since other water

and wastewater utilities, with the exception of one, did not participate in the present case. Thus, the statement that our holding must apply to all water and wastewater systems in South Carolina is disingenuous. Again, however, if one interprets our actions in this matter as altering or amending the regulations in any fashion, one merely needs to reference 26 S.C. Code Ann. Regs. 103-500 (B) and 103-700 (B) to derive our ability to alter or amend a regulation or to broaden or impose an additional standard in this matter. CWS was given a chance to address this problem at the hearing on this case, so there is no Constitutional due process violation. The requirements imposed are directly linked to substantial evidence before this Commission, so our holding is not arbitrary and capricious, nor does it exceed the Commission's authority under law as per the regulations cited above. We can ultimately consider the applicability of our interpretation of the regulation to other companies, but the purpose of Order No. 2005-328 was to address deficiencies that we saw with respect to Carolina Water Service. In other words, our imposed procedural remedy was specifically imposed as the result of a deficiency in the information provided by Carolina Water Service. This allegation of error is totally without merit.

IV. CONCLUSION

Having found that each of the allegations of Carolina Water Service in its Petition is without merit, we hereby deny and dismiss the Petition.

V. APPEAL BOND

The Company states that in the event that their petition for rehearing or reconsideration is denied, it requests that this Commission approve a bond pursuant to

S.C. Code Ann. Section 58-5-240(D)(Supp.2004) in the amount of $326,808.00. According to CWS, this figure represents twice the annual difference between the sewer revenue which would be generated by the sewer rates approved in Order No. 2005-328 and the sewer revenue that the Company would receive if the Commission had authorized rates generating $1,077,178 in additional revenue based upon application of the adopted customer growth component to both revenues and expenses. The Company submitted both a calculation and a proposed bond form to be executed by a surety company authorized to do business in this state. CWS submits that, based upon the additional amount of sewer revenues which would be generated over and above those authorized in Order No. 2005-328 over a period of two years, a surety bond in the amount proposed is sufficient. CWS therefore requests that the Commission approve its proposed bond form to be posted during any appeal by CWS in the event that the requested revisions to the sewer rate schedule are not granted as per the Company's Petition. CWS further requests that the Commission allow CWS to make any refunds required (if the rates put into effect are finally determined to be excessive) by crediting existing customers' bills.

We have examined the amount of bond proposed and the bond form proposed by the Company and have determined that these should be approved. The proposed amount of the bond is reasonable and the proposed form is appropriate.

We hold in abeyance any ruling on whether or not CWS shall be allowed to make any refunds that may ultimately be required by crediting existing customers' bills.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Randy Mitchell, Chairman

ATTEST:

G. O'Neal Hamilton, Vice-Chairman

(SEAL)